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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,349	01/30/2002	Jean-Marie Badoz	MICROM7	9915

7590 06/04/2003  
Gary M Cohen  
Strafford Building Number Three  
125 Strafford Avenue Suite 300  
Wayne, PA 19102

EXAMINER

WILSON, JOHN J

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/049,349

Applicant(s)

BADOZ, JEAN-MARIE

Examiner

John J. Wilson

Art Unit

3732

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by McSpadden (5938440). McSpadden shows a cannal instrument having a cross section comprising three flutes 298, 300, 302, Fig. 14B, that are situated at the vertices of an isosceles triangle as shown.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farzin-Nia (WO 99/37235) in view of McSpadden (5938440). Farzin-Nia teaches a method for production of a cannal instrument that includes the steps of successively machining surfaces, page 10, lines 1-12, including surfaces located at 120 degrees. Farzin-Nia does not show a third machining that is at a greater depth than the first two. McSpadden shows a third surface 298 that is at a greater depth than the other two. It would be obvious to one of ordinary skill in the art to

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modify the method of Farzin-Nia to include machining the structure as shown by McSpadden in order to make use of known method steps of forming cannal instruments. As to claim 4, the specific angle of cut used is an obvious matter of choice in degree and shape to one of ordinary skill in the art in order to obtain the desired results.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farzin-Nia (WO 99/37235) in view of McSpadden (5938440) as applied to claim 2 above, and further in view of Buchanan (5752825). The above combination does not show changing the depth along the instrument. Buchanan shows changing the depth along the instrument, column 2, lines 28-34. It would be obvious to one of ordinary skill in the art to modify the above combination to include changing the depth along the instrument as shown by Buchanan in order to obtain the desired shape and properties.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farzin-Nia (WO 99/37235) in view of Garman (6299445). Farzin-Nia teaches a method for production of a cannal instrument that includes the steps of successively machining surfaces, page 10, lines 1-12, including surfaces located at 120 degrees. Farzin-Nia does not show a two machining steps preformed at an angle greater than 120 degrees. Garman shows a shape having material removed at sections greater than 120 degrees, Fig. 15. It would be obvious to one of ordinary skill in the art to modify the method of Farzin-Nia to include machining the structure as shown by Garman in order to make use of known method steps of forming cannal instruments.

***Drawings***

The drawings filed January 30, 2002 are objected to by the examiner because figures shown prior art must be labeled as such, see Fig. 1.

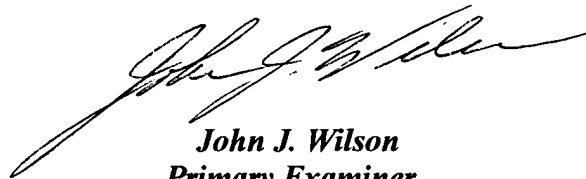
***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Conclusion***

Prior art cited: Garman (5857852) shows that it is known that deeper cuts increase flexibility, column 2, lines 24-30. Taylor et al (5882198) shows a rake angle that varies along the length of the instrument, column 9, lines 42-45. Farzin-Nia et al (5984679) shows machining methods.

Any inquiry concerning this communication should be directed to John Wilson at telephone number (703) 308-2699.



**John J. Wilson  
Primary Examiner  
Art Unit 3732**

jjw  
May 30, 2003  
Fax (703) 308-2708  
Work Schedule: Monday through Friday, Flex Time